

**“ DO NOT CLOAK THE HAQQ
WITH BAATIL, NOR
CONCEAL THE HAQQ
WHILST YOU ARE (FULLY)
AWARE.” —Qur’aan**

AR-RADDUL FIQHI ALAA

A JURIDICAL REBUTTAL AGAINST

JUSTICE MUFTI MUHAMMAD TAQI UTHMAANI

BY:

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FOREWORD

Ar-Raddul Fiqhi (A Juridical Rebuttal), is a treatise written by Hadhrat Maulana Mufti Habeebullaah of Pakistan. The author is among the senior Ulama of Pakistan. He is the Shaikhul Hadith as well as the Chief of Specialized Studies at Jaamia Islamiyah, Karachi, Pakistan.

Hadhrat Mufti Habeebullaah Saheb has written his treatise in refutation of Hadhrat Mufti Taqi Uthmaani's views and fatwas on the questions of:

- (1) Interest on late payment of instalments
- (2) Absolution of debt from debtors
- (3) The legal entity called company with its limited liability.

This treatise is a concise response to the utter baseless western concepts of the capitalist system of economy. Hitherto many Muslims outside Pakistan labour under the false notion that whatever Hadhrat Mufti Taqi Saheb proclaims on the subject of economics is the final word of the Shariah. This is indeed a thorough misconception. Hadhrat Mufti Taqi Sahib's hybrid capitalist system of economics is littered with theories and concepts in stark conflict with the Shariah of Islam.

In view of this diametric clash with the Shariah, the Hanafi Muqallid Ulama have been constrained into refutation and rebuttal of the personal opinions of Hadhrat Mufti Taqi Saheb. This decision is in consonance with the Qur'aanic exhortation tacitly conveyed to the Guardians of the Divine Shariah in the following aayat which was a stern reprimand and condemnation of the vile attitude of the Ulama of Bani Israaeel whose salient feature was concealment of the Haqq and confusing it to suit their mundane and egoistical

(*nafsaani*) motives:

"They (the followers) took their Ulama and Mashaaikh as gods besides Allah Ta' ala."

The academic, moral and spiritual *ta'leem and tarbiyat* acquired under the Shadow of the Akaabireen Ulama do not permit the *Muqallideen* Ulama of the Haqq to remain silent observers of the erosion of the Shariah committed by the ravages of *Ta'weel-e-Baatil* (False and Baseless Interpretation) emanating from the fortifications of seniority. While seniority has to be honoured and its due dignity be upheld, it cannot be permitted its unbridled plunge into *Baatil* portrayed in the hues of the Shariah.

It is with trepidation and tremendous pain in the heart that we feel impelled to embark on the unenviable exercise of hauling Hadhrat Mufti Taqi Sahib from the lofty pedestal he occupies in the *Ilmi* firmament of the contemporary Ulama. But when Haqq commands and constrains, then even juniors like us have no alternative other than to execute the Call and Command of guarding the Divine Shariah—a Call which emanates from the very Arsh of Allah Azza Wa Jal.

Hadhrat Mufti Taqi Sahib has in recent years descended from his sublime pedestal of being one of the leading Ulama-e-Haqq, to pose as the champion of the capitalist cause adopted by fussaag Muslim entrepreneurs in whose veins pulsate the blood of Riba. They have absolutely no truck with the Shariah. But, the name of the Shariah is indispensable for their pursuit of the establishment of financial empires along the lines of their kuffaar counterparts in the western world. Hence, inspite of their diabolical attitude towards Islam and their inveterate aversion for the man who dons the beard of Rasulullah (sallallahu alayhi wasallam), their lascivious and lustful *nafsaani* agenda compels them to consort with the orthodox type such as Hadhrat Mufti Taqi Sahib.

While we are constrained to refute Hadhrat Mufti Taqi Saheb, we

must mourn the loss from our ranks of, a wonderful Scholar such as Hadhrat Mufti Taqi Saheb whose moral and spiritual fibre has been gradually eroded and emaciated by his association, socialization and fraternization with the western enemies of Allah Ta'ala's Deen—enemies who pose as Muslims, but whose inner souls reek of kufr and whose clean-shaven, western faces glaringly depict the nifaaq which their breasts conceal.

In Hadhrat Mufti Sahib's abdication of his Shar'i throne and in his refuge in the camp of the capitalists, we have undoubtedly lost someone who once upon a time was a citadel of *Ilmi* strength for us juniors. But this Decree of Allah Ta'ala is accepted, and it remains our heartfelt dua that Hadhrat Mufti Taqi Saheb returns to the fold of old-fashioned orthodoxy even if he will be branded a 'fundamentalist' and a 'terrorist'. His home is not in the filthy five star hotels of the capitalists nor in the plush boardrooms of the devourers of *riba*. His place is the dusty floor of the humble Madrasah which subsists in the spiritual Shadow of the Madrasah of Suffah of Rasulullah (sallallahu alayhi wasallam).

This brief treatise of Hadhrat Mufti Habeebullaah Sahib may not be fully comprehensible to most unacquainted minds. We have discussed and outlined these questions and responded in greater detail to Hadhrat Mufti Taqi's utterly fallacious arguments and interpretations in our books:

- (1) The Concept of Limited Liability-Untenable in the Shariah
- (2) Penalty on Late Payment is Interest
- (3) Penalty of Default
- (4) Unit Trusts

Anyone who wishes to receive copies of these books, may write to us. While we do not fix a price for the books, stamps and any contribution will assist towards the printing and postage costs

"And on us is only to deliver the Clear Message." (Qur'aan)

The Protector of the Divine Shariah is Allah Azza Wa Jal. This

assurance He categorically gives in His Qur'aan:

“Verily, We have revealed the Thikr, and verily, We shall be its Protectors.”.

Allah Ta' ala defends and guards His Inviolable Shariah and Deen even with the agency of juniors, when the seniors abscond from their stations of command, and if a stage develops when there are no longer even junior Ulama-e-Haqq left to protect the Deen, Allah Ta' ala will harness *even fussaag* to maintain the purity of This Divine Shariah. Thus the Hadith says:

"Verily Allah Ta' ala will aid this Deen with even a faasiq man."

But bear in mind that the *fussaag* who will stand up as Defenders of the Deen will be men with correct beliefs. They will have the very same doctrinal Imaan which the Sahaabah expounded and held while their mundane life will be contaminated with *fisq* and *fujoor*. That is the unquestionable decree of the Creator. It is His Prerogative.

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INTRODUCTION

I have made an indepth study of Mufti Muhammad Taqi Uthmaani Sahib's book, *Islaam Aur Jadeed Ma' eeshat Wa Tijaarat* (Islam and Modern Life and Trade). I have concluded that Mufti Saheb has embarked on an unsuccessful attempt to establish the capitalist system with the aid of Islam and the Shariat. While Islam has refuted this system, Mufti Saheb has, on the contrary, endeavoured to make Islam subservient to this (capitalist) system. But, we (Muslims) and our social, political life and systems are all subservient to the Shariah. Mufti Saheb has furthermore, attempted by the addition of the word, *jadeed* (modern), to present the system of the capitalists in the hues of the Shariah. This endeavour envisages monetary gain for the capitalists who will be led to believe that their gain is halaal profit. They will thus make use of such profit without understanding a sin to be sinful. This is truly loss in this world and in the Aakhirah.

ZAKAAT

Prior to this attempt, Mufti Sahib had issued a *fatwa* to enable the government to claim Zakaat from the banks. However, the Authorities of Fatwa and Knowledge had rejected this *fatwa*, explaining that Zakaat is not discharged in this manner. May Allah Ta' ala reward Mufti Abdus Salaam, Chief of Daarul Ifta Binnuritown munificently. He had elaborated with great detail on this issue in his *Jawaahirul Fataawa*, Vol. 3.

BANK INTEREST

Similarly, on 24th Rajab 1415 (28-09-1994) at a conference of the Muftis of Pakistan convened at Daarul Uloom Karachi, Hadhrat Mufti Saheb had abortively attempted to legalize bank interest on the basis of six *Faasid Ta'weelaat* (Corrupt Interpretations). This writer too had participated in the gathering. The Muftis, hearing the *rakeekah* (flimsy) interpretations of Mufti Sahib were bewildered

and aghast. We have to congratulate Mufti Abdus Sattaar, Chief of Daarul Ifta Khairul Madaaris of Multan who rejected these interpretations. In the evening this conference ended without legalizing interest.

You (O Reader!), are aware of the ultimate consequence of the *fatwa* which Mufti Sahib had handed to Shah Faisal Bank and to N.I.E. Unit Trust. Similarly, (some) Ulama had issued a *fatwa* of permissibility for Alliance, without thinking what they were in reality embarking on. Is this profit or not? Ask those who had lost their capital, about the trading in shares.

THE BOOK UNDER SCRUTINY

Presently our attention is focussed on the aforementioned book. I am presenting some comments on this book to readers to make the reality of this book conspicuous for those who have become involved in the trade of shares on the basis of Mufti Sahib's *fatwa* so that they may understand the difference between Haqq and baatil, and dissociate themselves (from this unlawful trade).

The Kitaab of Allah Ta' ala, The Qur'aan-e-Kareem is the Law until Qiyaamah. Its exposition in the form of the Sunhah is sufficient and clear until the Day of Qiyaamah. The *Risaalat* of Rasulullah (sallallahu alayhi wasallam) will endure until Qiyaamah. It devolves as an obligatory duty on us as Muslims to keep in view the principles of the Shariah in every department of life. It does not behove us to first innovate an act to satisfy our desire, then by adding the word, 'modern' seek to legalize it by taking support of erroneous interpretations.

This is precisely what has transpired in trading on the stock exchange and this is what is happening presently. Mufti Sahib has named it (stock exchange) *Bazaar-e-Hisas (the market of shares)*. He has made the abortive attempt to legalize it by means of interpretations. In his book he has further offered capitalists the

protection of immunity against debt. In the event of the company going bankrupt, the debts cannot be claimed from them (the capitalist shareholders in the company).

Mufti Sahib has also said that to make persons owners of capital their verbal statement of security suffices. Whoever becomes a buyer of shares only verbally (not by intention), in exchange for this verbal averment he will be given capital. Mufti Saheb has said that even if one has no intention of being a buyer, then too he becomes a buyer of shares merely by a verbal statement. This is permissible, according to Mufti Sahib, as will be mentioned later. (*We have not understood the purport of this contention—translator*).

According to his own confession which will be mentioned later, these companies also deal in interest, but there is no control over them. Despite this, trading in company shares (on the stock exchange) is permissible according to Mufti Sahib. But the command of the Qur'aan-e-Kareem is:

"Take notice of war from Allah Ta' ala and His Rasool"

What need do Muslims have for indulging in usurious transactions which are accursed? Allah Ta'ala declares:

"Allah destroys riba and causes Sadaqaat to flourish."

There is destruction in interest. Many people in these times who have been destroyed in consequence of their participation in share-trading, and the country (Pakistan) has become a pauper. This is the consequence of diversion from the Command of Allah Ta' ala.

The motive for all these (liberal) opinions is the desire to be known as 'scholars' and to be proclaimed experts in modern research. This is tantamount to saying: We have no affinity with orthodox Islam.

There is an outstanding attribute of simplicity in the *Tareeqah* (Way) of Rasulullah (sallallahu alayhi wasallam). This simple system precludes the capitalists from augmenting their capital by means of *sattah baazi*, and snatching the little capital of the masses

by making them ignoramuses.

THE FATWA OF MUFTI KIFAAYATULLAH SAAHIB

Mufti A'zam of Hind, Mufti Kifaayatullah Saahib states in his *Fataawa* that trading in shares is based on gambling (*sattah baazi.*). His *Fatwa* is reproduced hereunder:

"Question: *In our age the tramways, railways and other factories sell what they term shares. A company is established for operating tramways, railways or for manufacturing and trading in other products such as steel, timber, etc. The capital is fixed and shares are sold. Salaried employees (officials and directors) are appointed to manage the affairs of the company. They issue periodical financial reports of the shareholders while a portion of the profits is retained (not distributed). This capital is also invested in interest ventures. The interest is also included in the profit for distribution to the shareholders.*

The value of these shares rises and falls according to the performance of the company. According to these (market) values, shareholders sell their shares. The method of selling is as follows: the seller instructs an agent to sell his shares. The agent keeps the seller informed of the fluctuating prices. If the seller is satisfied with a price, he instructs the agent to sell. The buyer does not take possession of any tangible assets. What happens is that the name of the seller is expunged and the name of the buyer is now listed as the owner of the shares.

If the buyer wishes to acquire a share of the tangible assets of the company (in view of him being a shareholder), this is not possible. The company's employees will not comply nor will they refund him the price (of his share of the asset). The only option he has is to sell the shares at the market value in the way he has purchased them. Is it permissible to trade in these shares according to the Shariah? If it is permissible, what type of transaction is this. Is Zakaat incumbent on the value of the shares or on the profit (i.e. the dividend)?

ANSWER: *The aforementioned transaction is unlawful on the basis of several factors:*

(1) This deal does not come within the scope of any transaction

of commerce of the Shariah. It is neither a sale nor a partnership nor any other lawful Shar'i transaction.

(2) Riba dealings are haraam.

(3) Buying and selling of these 'shares' are not permissible because the item of sale is unknown. It is quite apparent that the certificate which the buyer receives is not the 'mabee' (the tangible asset of the transaction). The assets being sold are thus either the cash which the company holds or the stock of the company which belongs to all the shareholders. If the mabee is the cash, then is it obvious that inequality (between the price paid and the proportionate cash) is not permissible (since it is riba). Furthermore, the shareholder cannot acquire his proportionate cash from the company. The seller is therefore unable to deliver the mabee to the buyer. At the time of the sale, the seller and the buyer are unaware of the amount of cash which belongs to the seller. If the mabee is a proportionate share of the company's stock, then although the sale of a portion of the partnership asset is permissible, it being unknown renders the transaction unlawful.....This transaction is not permissible. Buying and selling of shares is forbidden." (Kifaayatul Mufti, Vol.8, page 123)

MUFTI TAQI SAHIB IN CONFLICT WITH THE PRINCIPLE OF THE FUQAHA

Although the words of buying and selling are used in the trade of shares, in reality it is only an exchange of papers. Besides this, it is nothing. In spite of acknowledging this fact in his book, Mufti Taqi Sahib proclaims it permissible on the basis of the words employed. It appears that Mufti Taqi Sahib has not observed the accepted principle of the Fuqaha pertaining to buying and selling, namely: *"The actual meanings are taken into consideration"*. The words are not the determinant in this context. Explaining the permissibility, Mufti Taqi Sahib avers that the amount of cash which the buyer tenders should be in excess of the cash which constitutes part of the seller's proportionate share of the assets of the company. Thus the

amount of the seller's cash in his total proportionate share of the company's assets is sold for an equal amount of the cash tendered by the buyer. The extra cash which the buyer gives is in exchange for the other assets (besides cash) which the seller owns in the company. By this interpretation *riba* is circumvented (according to Mufti Sahib).

But the issue is that neither the seller nor the buyer is aware of the respective amounts of cash, stock and other tangible assets which constitute the share of the seller which he is supposedly selling. This comes within the scope of *mushtabah* (doubtful). In spite of Rasulullah (sallallahu alayhi wasallam) having prohibited *mushtabah*, how has Mufti Sahib permitted it? It is mentioned in the Hadith:

"Nabi (sallallahu alayhi wasallam) prohibited najash. "

Najash is a deal in which the words indicate a sale transaction while there is no intention of buying. How did Mufti Sahib permit trade in shares when the intention is not to acquire tangible assets?

The Mufti of the time should keep his sight on the way in which people trade. In fact, he himself concedes this. If the ways of trading are in compliance with the Shariah, they should be permitted. If in conflict with the Shariah, they should be prohibited.

In the Islamic system of trade there are neither interest dealings nor any impediments to taking possession (of the commodity). The basis of trade should be honesty and trust, and it should be crystal clear (there being no ambiguity in the transaction). In fact, Rasulullah (sallallahu alayhi wasallam) instructed that if part of the grain has been moistened by rainwater, it should be revealed for viewing (it should not be concealed). But in the matter of selling and buying shares, neither the seller nor the buyer is aware of the assets of the transaction. Furthermore it is impossible for the buyer to take possession of the commodity he purchases.

Rasulullah (sallallahu alayhi wasallam) said: *"There is neither*

suffering harm nor causing harm in Islam. " (Muslim)

Another Hadith states:

"There is no deception in Islam."

It is quite obvious that a transaction in which the elements of the sale are unknown and ambiguous, comprises of harm and deception.

MUFTI TAQI SAHIB'S IMPROPER DEFENCE OF THE CAPITALISTS

If the company goes insolvent, the capitalist shareholders have no liability. They are not responsible for the debts of the company. Mufti Sahib has fabricated this concept and has produced several analogies in substantiation. Alas! This concept does not have the slightest affinity with Islam. None of the analogies presented by Mufti Sahib has any relationship with this concept. In spite of this, he has made an ardent effort to defend the capitalists by means of this (self-fabricated) concept. *(Limited liability and absolution from debt are in fact concepts which Mufti Taqi Sahib has borrowed from the capitalist system solely to provide Shar'i justification and legality for these fallacious haraam concepts—Mujlisul Ulama)* Thus Mufti Sahib says: *"Shirkat (Partnership) does not have its own independent existence. But the company has its own independent legal existence. It is termed a legal entity."* Page 80

Mufti Taqi Sahib's motive underlying this statement is the defence of the capitalists. He has extracted the following conclusion from this concept:

"The liability of the directors too is limited. The liability of the company which is a legal person is also limited. In effect, there is no relief for the creditors to claim payment of debts in excess of the assets of the company. In the terminology of the Fuqaha, when there is no way for settling the debts of the creditors, it is called Kharaabus Zimmah." Page 82.

By these averments he has given immunity to the capitalist shareholders. If the company goes insolvent, the shareholders are absolved of all liability. The basis for this claim is nothing but a

fabricated terminology. In order to give protection to the shareholders he has presented his personal idea. In the process he has deemed that all the people are ignoramus who will swallow this fabrication of the company being a legal person. This is never the terminology of the Fuqaha.

Furthermore, the analogies which he has presented have no relationship with this fabricated fiction of a legal person. There is the difference of heaven and earth between them. In fact, according to the principle of the Fuqaha stated in *Sharh Uqood Rasmul Mufti*, he has no right to present analogies.

On page 80 of his book, Mufti Sahib has presented the intuition of Waqf as an analogy for the fictitious concept. It is incorrect to present an analogy with Waqf because a Waqf has no owner. The popular rule regarding Waqf is: *"A Waqf is not owned (by anyone) nor can it be assigned to (anyone's) ownership."* But in the company concept, the shareholders are (supposedly) the owners. They obtain loans and assume responsibility. They consume the profit of the company whereas there is nothing of this sort in a Waqf. The profits of a Waqf are also Waqf while there is no one responsible for its loss.

On page 80 he has also made the analogy with the Baitul Maal. This analogy is also erroneous because the assets in a Baitul Maal are also a type of Waqf.

On page 81, Mufti Taqi Saheb has presented the analogy of *Khaltatut Shu-yoo'*. On the same page he acknowledges that this concept is not in compliance with the Hanafi Math-hab. Since he is a Hanafi, he has no right of presenting this example. He further adds: *"It should be remembered that between the system of the company and Khaltatut Shuyoo' is the difference....."*

When there is a difference, then why present it in substantiation?

On page 81 he concedes:

"However, this terminology is certainly a new one. "

Why did he invent such terminology to give protection to the capitalists? On page 81 he has also presented in substantiation the analogy with one who is described as *Mustaghraq bid dain* (one

overwhelmed by debt, i.e. an insolvent person). This too is erroneous because here the insolvent debtor is deceased while the directors and shareholders of a company are alive. Thus all four analogies are fallacious.

The rule is that when there is a difference between the mas'alah and the examples presented, then the analogies are baseless. Refer to *Sharh Uqood Rasmul Mufti* where it states:

"....Because, it is rare that for a contingent development there is no mention in the kutub of the Math-hab, either in exactitude or by the mention of a general principle which embraces it (the new development). A similar example is insufficient (for the formulation of a ruling) because it is quite probable that between the new development and the acquired example there is a subtle difference which is beyond his (the Aalim's) comprehension. The Fuqaha have differentiated between numerous masaa-il and their similarities (i.e. similar occurrences). So much so, that they have compiled books of such differences."

THE EXAMPLE OF THE MUDHAARIB AND RABBUL MAAL

Similarly, on page 81, Mufti Taqi Saheb says:

"The second speciality of the company, viz., its limited liability, is worthy of Shar'i consideration."

Mufti Sahib presents the *Mudhaarib* and the *Rabbul Maal* as an analogy. This is an erroneous presentation. In so far as the company is concerned, the issue of *Mudhaarabat* is unrelated with the company. In fact, he himself has designated this issue (of the company) '*Shirkat-e-Musaahamah*' on page 62. Furthermore, this too is his personal terminology which he has fabricated. For the Sake of Allah Ta' ala, do not fabricate terminologies to ruin the People (of Islam). Inform them unequivocally that the transactions of the stock exchange are improper (i.e. not permissible). They should not become involved in such dealings, for Islam has prohibited this capitalist system.

You (i.e. Mufti Taqi Sahib) have made the innovation of

terminologies the basis in your (capitalist) conception. Both the analogies and the terminologies are your personal inventions. Is this the way of protection? (i.e. protection of the Shariah).

The question now is: Who should point out these (erroneous) issues to you? I should clarify to you that on one occasion you and I had a confrontation on the occasion when you had invited the Muftis of Pakistan. You had then presented interpretations for legalizing bank interest. The discussions proceeded until the evening, and these interpretations were rebuffed (by the Muftis of Pakistan). You thus did not attain the aim for which you had invited the honourable Muftis.

Again, I had discussed with you on a second occasion when four Muftis of your institution, Darul Uloom Karachi, had issued the erroneous fatwa on the issue of Waqf on the baseless assumption of it being Wasiyyat. After the discussion with me, you perused my Fatwa and accepted my viewpoint. You had in fact presented your acceptance in written form. You thus conceded that a Waqf is a Waqf (not Wasiyyat). Even the (Muftis) of (Daarul Uloom Newtown and Jaamia Faruqiyyah) had accepted my viewpoint.

I presented myself on a third occasion to discuss a mas'alah pertaining to Nikah. But your Muftis refused to discuss. I am now, therefore, constrained to present my refutation in writing. I am embarking on this measure solely to close the avenue for the introduction of innovations in the Deen, and to endeavour to drive you and us to follow the Law which has come to us down the corridor of 14 centuries—that Law in which there is no scope for either capitalism or socialism.

KHALTATUSH SHUYOO'

In presenting *Khaltatush Shuyoo'* as an analogy (for the company entity), you did not even think that it has a *shart* (imperative condition) which stipulates that the animals of Zakaat should have

ten factors in common.

Furthermore, in this regard, Rasulullah (sallallahu alayhi wasallam) said:

“They (the two partners in stock animals of Zakaat) should claim from one another with justice.”

Another stipulation is that in the event of the death/loss of animals, the loss will be borne by each respective owner. Where the owners will refer to one another, the owners will be considered whereas in the mas'alah mentioned by you, the company has merely been cited as a 'legal person' while the owners have been separated (and granted immunity—set free from all liability). Despite this glaring difference, how did you present this as an analogy (for the validity of the company)?

On page 82 you say:

"Thus the correct analogy is this: The Rabbul Mudhaarib should consent to the Mudhaarib's acquisition of loans on condition that he, himself, assumes liability for it."

The stipulation of this condition is improper according to the Shariah since it is in conflict with the *muqtadha* (demand) of the *Mudhaarabat* transaction which requires that the *Rabbul Maal* be liable for the loss which is in excess of the profit. The general principle of the Fuqaha is that a condition which is in conflict with the *muqtadha* of the transaction is *faasid* (corrupt and haraam). Why then did you innovate such a condition?

Then, after raising an objection, you also present the solution by averring that the company is a legal person. This in fact is your fabricated terminology which you have invented for the protection of the capitalists. On the basis of this fabrication, you extracted the following consequence: *"There remains no way for the creditor to obtain fulfilment of the debt."* (page 82)

This is your protection (which has been theorized for the benefit of

the capitalists). You answer the objections of the Ulama to which you have conceded, by the repeated (and monotonous) presentation of your fabricated terminology that a company is a legal person.

On the same page you sought the support of the Hadith of Hadhrat Muaaz Bin Jabal (radhiyallahu anhu). But you overlook the fact that he was a *muflis* (insolvent) whereas the directors (and the shareholders of the company) are people with capital (i.e. they have money—and huge financial resources). Thus, taking support from this Hadith is baseless.

LIQUIDATION OF THE COMPANY

On page 83 you state: “*The liquidation of the company is the death of the legal person*”. This is your artificial life, hence your artificial death (all baseless fabrications). There is a well-known example. A robber used to borrow utensils from an avaricious man. When he would return the utensils, he would give more than the number he had borrowed with the comment: 'Your utensils gave birth to these extra ones.' Once the greedy man gave all the utensils of the house to the robber hoping that he would receive a large number in return. However, on this occasion the robber said: "All of them died." This is the analogy of the life and death of the legal person.

Hadhrat Mufti Sahib! There is no scope in Islam for this type of idea, for fabricating theories and swallowing debt, (i.e. defrauding the creditors), then to give Shar'i protection to those who devour the debts.

ABD-E-MA'THOON

On page 83 you present *Abd-e-Ma'thoon* (a slave who is permitted to trade) as an analogy for the validity of the company. But this analogy is also baseless and improper. *Abd-e-Ma'thoon* is a (real human) slave who can be sold. His liability is limited in view of him being a slave whereas the company directors and shareholders are free persons—persons with money who had acquired loans and incurred debts of their own accord.

EVERY TA'WEEL OF MUFTI TAQI SAHIB IS UNPRINCIPLED

On the same page you aver that despite them being alive, the debt cannot be claimed from them. How could you have made this averment thereby ruining and disadvantaging the creditors (so terribly, unjustly and recklessly)? Maulana Mufti Abdus Sattaar of Multan has correctly said that your every interpretation is beyond comprehension. What is the need for presenting such (baseless) interpretations?

(There is no difficulty in unravelling the mystery of all the weird and baatil interpretations of Mufti Taqi Sahib. The sole aim is to legalize capitalism and its baatil products for the Riba banks of the western world. After all, Hadhrat Mufti Sahib is a member of the so-called Shariah boards of almost all the top kuffaar riba banks of the western world. Mufti Abdus Sattaar Multaani Sahib should therefore not be wonderstruck by the stark weirdness of Mufti Taqi's unprincipled ta 'weelaat—Mujlisul Ulama of S.A.)

On page 83 you proceed to narrate the Shar'i dimension of some important issues of the company.

LIABILITY: In this matter too, you have employed several maneuvers. You say: *"This liability (of the company) in terms of the Shariah is neither Dhimaan (liability) nor Kifaalat (Securityship)."*—Page 84. If this is not liability (in terms of the Shariah) then why did you designate it as liability? You further say: *"Kifaalat or Dhimaanat pertains to such debt which is Waajib (incumbent). Purchasing shares is not waajib."*

BRIBERY

This means that while accepting it being liability it is not waajib. Mufti Sahib! Shares are not debt. Then you say: *"This is commission without anything in exchange which according to Fiqh is bribery."* Mufti Sahib! Truly this is the reality. But with your interpretations you remove it from the confines of bribery. This is improper for you. You further say: *"However, there are some acts for which*

remuneration may be taken, e.g. inspecting the company and what will be the business of the company, etc." (From the sublime to the ridiculous—Mujlisul Ulama)

But, remuneration and commission are not acquired for these activities. Those who accept such commission state with clarity that it is by way of *dhimaanat* (liability). Why do you present interpretations (to negate their explicit claim)? You have shown those who have made clear admissions, the way of legalizing bribery. Secondly, the inspection and assessment are effected for one's own purchase of shares. What is the meaning of taking commission and remuneration for an activity executed for oneself? What is the commission being paid for?

You have also presented another interpretation, viz., the remuneration is in lieu of the activity of agency of procuring buyers. Thereafter you somersaulted and say: *"In practice this is what the banks do. They do not retain the shares. On the contrary, they sell the shares to others."*

This purchase is for oneself. The selling is effected afterwards. How does the bank then become the agent? If there is profit or loss, it is for the account of the bank. In reality the bank, etc. verbally say: *"We are liable for the procurement of shares."* You, yourself had finally conceded this. You had also branded this as bribery. But you simply have no valid interpretation.

Towards the end of the same page, you mention an interpretation which you relate to the Ulama. But, you, yourself refuted it. This then is your mas'alah of *dhimaanat*.

THE SHAR'I STATUS OF SHARES

On page 85 you discuss the Shar'i status of shares, their buying and selling. You firstly cite Ulama who had maintained that this trade is not permissible on a certain basis. But, refuting this, you legalize this trade by means of your fabricated baseless interpretations.

You have conceded that basically shares are nothing, and that the

assets which shares represent are the real things. But then you change your stance. You concede and also reject. If the assets are the real things, then Zakaat too should be paid on these real (and tangible) entities. However, when you are confronted with the question of Zakaat, you (irrationally) say that Zakaat has to be paid on the market value of shares (i.e. the paper share certificates). You have been constrained to make this ruling because of the inability of awareness of the assets. Why did you venture this (baseless) fatwa?

Similarly, you have presented several interpretations in the matter of Zakaat. But when not a single one of the interpretations could be validly applied, you summarily accepted the aforementioned fatwa. You abandoned the tangible assets and clung to the paper share certificates.

Mufti Saheb! The truth is that irrespective of all the maneuvering, the ultimate conclusion is that trading (in the stock exchange) is the trade of papers—these share certificates. It is absolutely not the trade of tangible assets. You have conceded that there is in fact no knowledge of the assets.

On page 93 you say: *"For the masses of shareholders it is exceedingly difficult (to ascertain the value of the tangible assets), hence there is consensus of all the contemporary Ulama that the market value (of the share certificates) will be considered (for Zakaat purposes)."*

Mufti Sahib! Is Zakaat paid on merchandise, tangible assets and cash or on paper certificates which are sold in the market? Why do you opt for the market value (of these paper certificates)?

MERCHANDISE

On page 94 you say: *"If a share has been purchased with the intention of trade and acquiring profit, then this (share certificate) will be regarded as merchandise (i.e. stock-in-trade subject to Zakaat)."*

This is your personal opinion. In it you profess that it is

merchandise. It is an admission as well as a rejection. In addition it is also a somersault. In a small pamphlet on the question of trading in shares, you have stated with clarity: *"On the contrary, the share (certificate) itself is regarded as merchandise and traded with."* You then responded: *"Just as the buying and selling of shares are permissible, so too is it permissible to sell the shares (which one has procured)."*

The effect of this reconciliation between the question and the answer is that you have professed that the share certificates are in fact merchandise. However, to this day there is no one who asserted that these certificates are stock-in-trade. It is thus clear that this is a fabricated artificial trade which you have rendered lawful. These certificates in the market pass from hand to hand. This is a continuous process of transference of certificates. There is no transference of tangible assets. No one has the power to physically hand over assets (which are artificially sold in the imagination), nor does anyone have knowledge of the assets.

INTEREST

In the book, *Jadeed Ma-eeshat*, you have admitted: *"Nowadays, most companies deposit their excess funds in the saving accounts of banks to earn interest."* Page 88

When you have conceded that this is an interest trade, then why have you permitted participation in it? Who has compelled people to participate in this trade? Allah Ta' ala and His Rasool has prohibited this trade and have sounded severe warnings (of punishment) for such participation. You have said that the word of the shareholder has no weight. He should therefore merely make known (his aversion for the interest). If his word is not accepted, then he is helpless in this matter. However, the question is: Who and what has forced him to participate in this trade? Why has he voluntarily participated in this (haraam) trade?

HADHRAT THAANVI'S SUPPORT?

In the attempt to seek support from the statement of Hadhrat Maulana Ashraf Ali Thaanvi's statement, Mufti Taqi Sahib has bumped himself. You have sought the support of Hadhrat Thaanvi. But, Hadhrat Thaanvi had made an averment in a doubtful case whereas your statement pertains to most companies, which come within the confines of *ghaalib zann* (near absolute certitude).

(In fact, investment to earn interest as well as participation in a variety of faasid, baatil and haraam trading activities are facts of absolute certitude. There is Qatiyat here, not merely Ghaalib Zann—Mujlisul Ulama)

The difference between *shakk* and *ghaalib zann* is manifest. Hadhrat Thaanvi (rahmatullah alayh) had also mentioned that Hindustan is *Daarul Harb*. But you (Mufti Taqi) are issuing your fatwa in Pakistan which is the land of Muslims. You have therefore erroneously sought to take support from Hadhrat Thaanvi's statement.

THE VIEW OF SHAIKH SIDDIQ DHAREER

Inspite of the contrary view of Shaikh Siddiq Dhareer, Mufti Taqi clings to his improper opinion. Regarding the issue of trading in shares, you state on page 89: *"The opinion of the well-known Aalim and expert of Fiqhi transactions, Shaikh Muhammad Siddiq Dhareer is that the basis of this type of trade (i.e. trading in shares on the stock exchange) is pure conjecture and opinion."* (That is opinion bereft of Shar'i substance—Mujlisul Ulama.)

When you, yourself cite the opinion of such an expert Aalim—and this opinion is the reality—then what has compelled you to issue a fatwa of permissibility and present interpretations? *(When an Aalim participates actively in the affairs of the devourers of Riba, when he socializes and fraternizes with them, he imperceptibly becomes assimilated in their style of thinking. He loses his Islamic bearings and suffers the convulsions of their indoctrination. Furthermore, being a remunerated employee of the western world's Riba banks*

solidifies the indoctrinated opinions of the employers. There should therefore be no difficulty in comprehending the factors which constrain the vile exercises of baatil ta'weelaat to legalize the abominable practices of riba.—Mujlisul Ulama)

You have also conceded on page 86: *"Here cash and other assets are being sold for only cash."* In this instance the sale will be lawful only if there is certitude that the cash (which is tendered) is more. When there is no knowledge whatsoever of this in the trade of shares, the question of certitude simply does not occur. How then did you issue a fatwa of permissibility inspite of Rasulullah's (sallallahu alayhi wasallam) proclamation: *"Shun that which casts you into doubt and adopt that which does not cast you into doubt"*? In other words, do not participate in doubtful transactions. Why do you issue a fatwa in conflict with this?

SOME TRANSACTIONS OF THE BANKS

Question: A man purchases a vehicle on instalment basis. For example, he pays R1000 every month. If he defaults in payment, the company (bank) levies a penalty on him. Is this penalty permissible or not?

Answer: If the debtor is in distress, the ruling is clearly stated in the Qur'aan-e-Hakeem: *"And if he is distressed, then (grant him) an extension until ability (i.e. until he is able to pay)."*

And if he is not hard-pressed, then too, it is not permissible to extract a penalty from him. This is established on the basis of the clear texts of the Qur'aan and Hadith. The Qur'aan states:

"Do not consume your wealth (among yourselves) in unlawful ways, taking it to the rulers so that a group may devour the wealth of the people in sinful ways whilst you know....." (Qur'aan)

"Whoever commits injustice to you, then you too may take vengeance in the (exact) manner as he had transgressed against you, Fear Allah and know that verily Allah is with the Muttaqeen." (Qur'aan)

"O People of Imaan! Do not devour your wealth among yourselves in unlawful ways, except that it (the manner of acquisition of wealth) is with your happiness...." (Qur'aan)

"And if you take revenge, then do so in the (exact) manner in which they had transgressed.." (Qur'aan)

"Abdullah narrated that Rasulullah (sallallahu alayhi wasallam) said: 'He who usurps the wealth of a Muslim unjustly, will meet Allah Ta' ala while He (Allah Ta' ala) will be Wrathful to him." (Ahmad)

"Abu Humaidi Saaidi narrated that Rasulullah (sallallahu alayhi wasallam) said: 'It is not lawful for anyone that he unjustly takes the wealth of his brother (Muslim). That is so because Allah Ta' ala has made haraam the wealth of a Muslim for another Muslim. " (Ahmad)

"Verily, Nabi (sallallahu alayhi wasallam) said: 'It is not lawful for any person to take (even) the staff of a Muslim without his happy consent, and that is because Allah Ta' ala has strictly made haraam the wealth of a Muslim for another Muslim." (Ahmad)

"Abu Hurrah Rafashi narrating from his uncle said that Rasulullah (sallallahu alayhi wasallam) said: 'Beware! Do not be unjust. Beware! The wealth of a man is not lawful (to take) without the happiness of his heart." (Shu' bul Imaan, Ad-Daar Qutni)

Whether the stipulated penalty on defaulted payment is of the same kind as the debt or of a different kind, it is explicit riba.

"If the creditor imposes on the debtor a certain sum (to be paid as a penalty) if he does not fulfil his obligation (payment) on due date, there is no difference regarding it being unlawful (baatil) because it is explicit riba regardless of whether the imposed penalty is of the same kind as the debt or a fixed item or a benefit."

(Tahreerul Kalaamil Khattaab—Buying and Selling by Instalments of Maulana Muhammad Taqi Uthmaani, page 82)

"Because it is not permissible for any Muslim to usurp the wealth of another person without valid Shar'i cause...." (Haashiyah RaddulMuhtaar, Vol.4, page 61)

According to the *Zaahir Math-hub* the *Mufta Bihi* (the official verdict) is impermissibility. (*Alaaiyah Shamiyah Tahtawiyah, Bahr Mujma', etc.—Ahsanul Fataawa, Vol.5, page 557*)

"Penalizing with wealth (i.e. paying a fine/penalty) is not permissible according to the Raaji' version in view of it being the imposition of zulm (injustice) by usurping the wealth of people and consuming it...." (Fiqhul Islaami Wa Adillatuhu, Vol.6, page 201)

"Imposition of penalty by usurping wealth is not permissible according to the Math-hab...." (Bahrur Raa-iq, Vol.5, page 41)

The imposition of monetary fines/penalties is zulm according to the Shariah. There is no basis for it in the Shariah. (This is stated in *Imdaadul Muftiyeen, Vol.2, page 907*).

PENALTY ON LATE PAYMENT

On the issue of the payment of a penalty on late payment of instalments, Mufti Taqi says in his book, *Islam Aur Jadeed Ma-eeshat Wa Tijaarat*: For this purpose it was suggested that the client, when entering into a murabahah transaction, should undertake that in case he defaults in payment at the due date, he will pay a specified amount to a charitable fund maintained by the bank. It must be ensured that no part of this amount shall form part of the income of the bank. However, the bank may establish a charitable fund for this purpose and all amounts credited therein shall be exclusively used for purely charitable purpose approved by the Shari'ah. The bank may also advance interest-free loans to the needy persons from this charitable fund.

This proposal is based on a ruling given by some Maliki jurists who say that if a debtor is asked to pay an additional amount in case of default, it is not allowed by Shari'ah, because it amounts to charging interest. However, in order to assure the creditor of prompt payment,

the debtor may undertake to give some amount in charity in case of default. This is, in fact, a sort of *Yamin* (vow) which is a self-imposed penalty to keep oneself away from default. Normally, such 'vows' create a moral or religious obligation and are not enforceable through courts. However, some Maliki jurists allow to make it justiceable, and there is nothing in the Holy Qur'aan or in the Sunnah of the Holy Prophet (sallallahu alayhi wasallam) which forbids making this 'vow' enforceable through the courts of law. Therefore, in cases of genuine need, this view can be acted upon.

Honourable Readers! According to Mufti Taqi the first achievement in closing the avenue of delaying payment by debtors, is its substantial acceptance. In *Fiqhi Maqaalaat*, Vol.1, page 129 it is mentioned that at the time of taking the signature of the debtor, a fixed sum in proportion to the debt should be imposed on him in the event of late payment of instalments. This penalty will be expended in charitable works. This stipulated sum (the penalty) will first be paid to the bank. The bank will then, as his representative, donate the money to charitable works. This measure, according to the book (mentioned above) is the 'best' pressure which could be exercised on the debtor to ensure payment.

What is the basis for this opinion? Among the *Akaabireen*, whose view is this? "Bring forth your proof if indeed you are truthful."—Qur'aan.

(1) There is no *Mustadal* (Basis of Deduction) for this opinion, and Insha'Allah Ta' ala, there will be no basis forthcoming for it. If some Imaam Khattaab had in his kitaab, *Tahreerul Kalaam*, mentioned this, it cannot be presented as a *daleel* as Mufti Taqi has done because in the quoted text appears the word, *iltizaam* while in the claim (of Mufti Taqi) appears *ilzaam* (i.e. incumbently imposing). There is the difference of heaven and earth between *iltizaam* and *ilzaam*.

(2) Even if we should forgo the above argument, there is a negation between the claim (*da'wah*) and the (*daleel*) proof. In the *daleel* it is stated: On him is a certain sum for a certain person and Sadqah for the masaakeen. However, the claim states that a fixed sum in

proportion to the debt be contributed to charitable works by way of *tabarru'* (kindness), and this sum should firstly be paid to the bank. This is incorrect. The quoted *daleel is mutlaq* (unrestricted, with no conditions attached), while the *da'wah* (claim) is *muqayyad*. (restricted with conditions). There is a stark difference between *mutlaq* and *muqayyad*.

(3) In another book, *Buying And Selling By Instalments*, on page 81, it is mentioned that the banks will supervise this (charitable) fund. This brings the penalty within the scope of the Hadith which brands the benefit acquired from every loan given as *riba*. It also comes within the purview of the Qur'aanic aayat:

"O People of Imaan! Do not devour among yourselves your wealth in unlawful ways, other than by means of such trade which (is transacted) with your happiness..."

Mutual pleasure (happiness/consent) is a necessary requisite. In view of the application of pressure on the debtor to extract payment of the penalty, this essential condition (*bit-taraadhi*) is lacking.

(4) This penalty most certainly comes in the scope of the Hadith of Rasulullah (sallallahu alayhi wasallam): "Beware! Do not be unjust. Beware! The wealth of a man is not lawful except with the happiness of his heart." (Baihqi in *Shu'bul Imaan*)

(5) Even if we adopt blindness and assume that this penalty is *tabarru'* and *sadqah*, then too it is not permissible. The definition of *Sadqah* is wealth given in the Path of Allah Ta' ala, to the *Masaakeen*, *Fuqara* or in any charitable activity to gain His Pleasure. (*Aap Ke Masaa-il*, Vol.3, page 422)

There is no need to apply pressure on a man for the extraction of *Sadqah*. There is no need for his signature nor to constrain him to contribute to any specific institution. *Sadqah* is not encumbered with these types of restrictions. In *Sadqah*, a man enjoys unfettered freedom of choice of amount and avenue of distribution. He is not under obligation to commit himself with a signature nor to appoint a bank to be his agent in the distribution of his *Sadqah*.

The matter is aggravated if among the bank's decision-makers are men of other religions, e.g. Qadianis and Christians. In such an event there is no guarantee that the Sadqah will be correctly distributed. What is more abhorrent than the utilization of one's Sadqah for the missionary activities of Christianity and Qadianism?

(The author has introduced this dimension in view of the permeation by Christians and Qadianis in Muslim institutions, both private and governmental, in Pakistan. Perhaps, at this stage, there may not be such a noxious permeation of Rijs and Kufr in the so-called Muslim banks of South Africa and elsewhere. Nevertheless, all these banks are controlled and manipulated by an array of juhala, fussaaq, hybrid capitalists, hired 'scholars' and downright mercenaries. Their talk of sadqah, tabarru' and brotherhood is pure deception, advertising gimmicks and stunts to beguile unwary Muslims into their parasitic tentacles bloodied and putrefied by the unabashed wholesale consumption of Riba. — Mujlisul Ulama)

Sight should not be lost of the irrefutable fact that the 'sadqah' levy is a monetary penalty which is impermissible and haraam.

"If we even sigh, we are reviled. If they even murder, there is no murmur."

Stipulation of a monetary penalty is *zulm*. There is no basis in the Shariah for monetary penalties and fines. Even the Islamic ruler is not empowered to levy monetary fines. Whatever monetary penalties have been imposed on people, should be returned to them. And Allah Ta'ala knows best.

CONCLUSION

Islam unequivocally refutes capitalism. Baseless interpretations are in fact giving impetus for the extensive spread of capitalism. Islam has imparted to us the lesson of ease. We, therefore have no need to mutilate the *Ahkaam* of the Deen for the sake of the capitalists. It is our fervent supplication that Allah, Rabbul Izzat bestows to us proper Deeni comprehension, and the *taufeeq* to practise accordingly. *Aameen thumma Aameen.*

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